It should not in future be necessary for a Magistrate to have to insist on the production of any such report because reports at least, by complainants, should be put in by the prosecution in every case as a matter of course; and I can only express the hope that it will not be necessary again for me to consider on appeal the effect of the failure by the prosecution to tender a report which ought to have been tendered.

Another point taken on behalf of the appellant in this appeal was that there was insufficient evidence of guilty knowledge on the part of the accused. I think it was unfortunate that the prosecution did not prove the conviction of the actual thief, and I think they ought to have done so. Indeed I thought at first that the principal thief ought to have been called as a witness, but as I was informed that he had been sent to Telok Mas it might be said that he could not be produced as a witness without an amount of delay and expense which under the circumstances would be unreasonable.

After careful consideration of the evidence and after taking into account the fact that the complainant's report was not produced and that the conviction of the principal thief was not strictly proved I came to the conclusion that there remained ample evidence upon which the learned Magistrate could find as he did and there was no failure of justice, and I therefore dismissed the appeal.

Appeal dismissed.

Re SAW HOCK HO

[Cr. Rev. J. (Spenser Wilkinson J.) September 14, 1955]

[Penang — Criminal Revision No. 25 of 1955]

Road Traffic — Motor Vehicles (Driving Licences) Regulations, 1952 — Holder of a provisional driving licence driving a motor car without being under supervision of a person holding an appropriate driving licence and without "L" plates — Charges.

In this case the accused was charged as follows: "That you on 5.5.55 at 8.30 a.m. at junction of Green Lane and Glugor Road, Penang, being the holder of a provisional driving licence No. 73272, did drive motor car No. K. 3184 without being accompanied by a competent driver, and that you have thereby committed an offence under s. 3(1) of the Motor Vehicles (Driving Offences) Proclamation. 2nd: That you on the same date, time and place, being the holder of a provisional driving licence No. 73272, while driving motor car No. K. 3184 did fail to display the prescribed letter "L" on the front and at the back of the said vehicle and that you have thereby committed an offence under s.s. 14(2)(c) and 14(3) of the Motor Vehicles (Driving Licences) Regulations, L.N. 479/52."

The learned Magistrate convicted the accused. The matter was referred to the High Court for revision as the learned Magistrate found that he had exceeded his jurisdiction in fining the accused $250 on the first charge when the maximum prescribed for an offence under s. 3(1) of the Proclamation is $200.

Heid: The charge was wrongly drawn. As the offence in this case consisted in failure to comply with the conditions subject to which the provisional licence was issued, it was essential that it should be so charged.

The convictions were altered to convictions upon the amended charges under the Motor Vehicles (Driving Licences) Regulations, 1952, and the sentence was maintained.

CRIMINAL REVISION.

Spenser Wilkinson J. (after reading the charges as reproduced in the head notes continued): — The learned Magistrate requested me to revise the case on the ground that he had exceeded his jurisdiction in fining the accused $250 when the maximum provided for an offence under section 3(1) of the Proclamation is $200.

On perusing the record, however, I find that the fault lies in the charge, not in the sentence. Section 3 of the Motor Vehicles (Driving Offences) Proclamation deals with persons who drive motor vehicles without a licence; it has nothing to do with persons who commit offences whilst holding a provisional licence. Both charges in this case — and indeed in similar cases in Penang — are entirely wrongly drawn.

The whole question of charges of this kind having in the case been drawn to my attention I think it right to make an endeavour to clarify the position. When a person holding a provisional licence drives a motor car without having beside him a qualified driver and without having the proper "L" plates on his car he commits one or more offences under sub-regulation (3) of Regulation 14 of the Motor Vehicles (Driving Licences) Regulations, 1952. The wording of this Regulation constitutes such a departure from the previous Regulations on the same subject that it is no wonder the Police and Magistrates have become somewhat confused in respect of these offences which only too frequently have to be dealt with in the Courts. Regulation 14 in particular necessitates a charge of such complication in respect of simple and everyday offences that I can only express the hope that those responsible will take early steps to amend it. Regulation 14(1) provides for the issue of provisional driving licences. Regulation 14(2) in respect of motor cars provides that such a licence shall be granted subject to "the condition" (in the singular) that until the holder has passed his test he shall :—

(a) drive under the supervision of a driver fully licensed to drive that particular type of vehicle; and

(c) while the vehicle is being driven by him, clearly display "a distinguishing mark as in Form No. 6 in the Part I of the First Schedule.'

Paragraph (b) of this sub-regulation is not relevant to the present case.

We come next to sub-regulation (3) which provides that any person to whom a provisional licence is granted fails to comply with any of the conditions subject to which it is granted he shall be guilty of an offence and be liable to a fine of $300 or two months' imprisonment or both.

The first question that arises upon this somewhat complicated regulation is whether a driver who at the same time fails to comply with conditions (a) and (c) is guilty of one offence or two. I have come to the conclusion that in such circumstances two offences are committed.

The next difficulty is to draft the charges and in order to assist both Courts and Prosecutors I here set out the manner in which it appears to me the offences, the subject matter of the present case, should have been charged:—

1. That you on the 5th May, 1955 at 9.30 a.m. at the junction of Green Lane and Glugor Road, Penang, being the holder of a provisional driving licence did fail to comply with one of the conditions subject to which it was issued, viz. that you used a motor car without being under the supervision of a person holding an appropriate driving licence and you thereby committed an offence under Regulation 14(3) of the Motor Vehicles (Driving Licences) Regulations, 1952.

2. That you at the same time and place being the holder of a provisional driving licence did fail to comply with one of the conditions subject to which it was issued, viz. that a motor car driven by you did not display either in front or at the back an "L" plate as prescribed and you thereby committed an offence punishable under Regulation 14(3) of the Motor Vehicles (Driving Licences) Regulation, 1952.

It is clear, I think, from the Regulations that the offence consists in failure to comply with the conditions and for this reason I think it is essential that it should be so charged.

In the present case I see no reason to alter the sentence in any way because the maximum fine upon each breach of condition is $300. I therefore alter the convictions to convictions upon the charges set out above and maintain the sentence.

Order accordingly.

MUNIANDEY v. PUBLIC PROSECUTOR

[A. Cr. J. (Wilson J.) September 27, 1955]

[K. L. — Criminal Appeal No. 69 of 1955]

Criminal Procedure Code (Cap. 6), ss. 426 and 432 — Order for payment of compensation — Whether imprisonment can be ordered in default of payment.

In this case the appellant was convicted of voluntarily causing hurt to two persons. The learned Magistrate in addition to sentencing him for the offences ordered the appellant to pay compensation to the two persons whom he injured and in default of payment he was sentenced to terms of imprisonment. The learned Magistrate further ordered the appellant to pay compensation to a witness who had suffered some damage, but the damage was not caused by the charge of which the appellant was convicted.

Held: (1) s. 426(ii) of the Criminal Procedure Code provides that para. (d) of s. 432(i) of the Code shall not apply to compensation awarded under s. 426 and therefore the Magistrate was wrong in ordering the imprisonment in default of payment of compensation; (2) as the damage to the witness was not caused by the charge of which the appellant was convicted, an order could not be made for the payment of compensation under s. 426(i)(b) of the Code.

[**Editorial Note:** s. 445 of the Criminal Procedure Code, 1955 (Singapore) expressly provides that the provisions of s. 447 shall be applicable to an order for compensation and it would seem that in Singapore an order of imprisonment can be awarded in default of payment of compensation.]

MAGISTRATE'S CRIMINAL APPEAL.

Appellant in person.

E. Brown (Federal Counsel) for the respondent.

Wilson J.: — The appellant was properly convicted on two charges of voluntarily causing hurt to two individuals. The appeal against the conviction was dismissed.

The learned Magistrate made an order for payment of compensation in the sum of $30 to one Krishna Mudeliar. Undoubtedly, this individual who was a witness suffered some damages for which the appellant ought to pay. This damage, however, was not caused by the charge of which he was convicted and, therefore, an order could not be made for the payment of compensation under section 426 (i) (b) of the Criminal Procedure Code.

The appellant was also ordered to pay compensation to the two persons whom he injured, and in default of payment was ordered, in one case, to suffer 14 days' imprisonment and, in the other case, to suffer 7 days' imprisonment. Although section 432 (i) (d) of the Criminal Procedure Code provides, on the face of it, for imprisonment in default of payment, section 426 (ii) provides that paragraph (d) of section 432 (i) of the Code shall not apply to compensation awarded under section 426.

The sentences of imprisonment in default of payment of compensation are quashed. The appeal against the sentences imposed, both of imprisonment and six strokes of the rotan, is dismissed.

Order accordingly.